IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6510 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTILAL NANABHAI JADHAV

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 6510 of 2001

MR MA KHARADI for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1

MR SJ DAVE, AGP, for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 08/01/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned

advocate Shri M.R. Shah for respondent No. 1 and learned AGP Shri S.J. Dave for respondent No. 2. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner is working as a Vidyasahayak under respondent No. 1. A criminal case has been registered against the petitioner wherein it has been alleged that the petitioner has committed offences punishable under the provisions of sec. 306 and 498(3) read with sec. 114 of the I.P.C. When the said fact was brought to the notice of respondent No. 2, respondent No. 2 wrote a letter dated 12.7.2001 to respondent No. 1 instructing respondent No. 1 to relieve the petitioner from service immediately. It has been stated in the said letter that as the petitioner has been involved in the offences referred to hereinabove and as he has been detained in jail, the petitioner should not be permitted to perform his duties. Being aggrieved by the said instructions given under letter dated 12.7.2001, the petitioner has approached this court with a prayer that the letter containing the instructions should be quashed and set aside.

3. Learned advocate Shri Kharadi appearing for the petitioner has submitted that the petitioner is working under respondent No. 1 and respondent No. 1 can take appropriate decision with regard to suspension or termination of service of the petitioner. It has been submitted by him that without having complete details about the alleged offences committed by the petitioner, it was not proper on the part of respondent No. 2 to give any direction or instruction to respondent No. 1 for relieving the petitioner.

4. At an earlier occasion on 10.8.2001, learned advocate Shri Kharadi appearing for the petitioner had submitted to this court that the petitioner had no objection if he is placed under suspension by respondent No. 1 and it was further submitted by the learned advocate that if the petitoner is placed under suspension, the petitoner would not challenge the order of suspension.

5. In view of the above facts, it has been submitted by the learned advocate for the petitioner that the letter dated 12.7.2001 instructing respondent No. 1 to relieve the petitioner should be quashed and aside.

6. Learned advocate Shri M.R. Shah appearing for respondent No. 1 has submitted that at this stage no

final decision has been taken by respondent No. 1 though he could not dispute the fact that respondent No. 1 has received the communication dated 12.7.2001 from respondent No. 2 as opinion of respondent No. 2 was sought for by respondent No. 1. It has been very fairly submitted by him that respondent No. 1 shall take action in accordance with law against the petitioner.

7. It has been thus submitted by him that the petition is premature at this stage because no action has been taken against the petitoner by respondent No. 1.

8. Learned AGP Shri Dave appearing for respondent No. 2 has also submitted that upon getting the intimation with regard to the petitioner's involvement in a criminal case, when respondent No. 1 had asked for guidance of respondent No. 2, respondent No. 2 had given his opinion to respondent No. 1. He has also submitted that the petition is premature because no action has been taken against the petitioenr at this stage by respondent No. 1.

9. Upon hearing the learned advocates and upon perusal of the impugned letter dated 12.7.2001, it is not in dispute that the petition is premature because till today no acton has been taken against the petitioner by any of the respondents. It is true that respondent No. 2 has given certain instructions to respondent No. 1 as respondent No. 1 had requested respondent No. 2 to give guidance to respondent No. 1. It is however always to be presumed that respondent No. 1 shall take action in accordance with law. In the circumstances, in my opinion, this petition is premature at this stage and, therefore, it is not entertained. It is, however, clarified that it would be open to respondent No. 1 to take appropriate action against the petitioner in accordance with law and respondent No. 1 shall not treat the instructions given by respondent No. 2 under letter dated 12.7.2001 as a direction. Respondent No. 1 shall independently and objectively look into the matter and shall pass appropriate order.

10. In view of the above observations and clarification, learned advocate Shri Kharadi appearing for the petitioner has not pressed this petition and,

therefore, the petition is disposed of accordingly. Rule is discharged with no order as to costs.

(A.R. Dave, J.)

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